IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17503 of 2007
Date of decision: February 6, 2009.

M/s Shiv Shakti Exporters & Anr.

...**Petitioner(s)**

v.

Union of India & Ors.

...**Respondent(s)**

CORAM:**HON'BLE MR. JUSTICE SURYA KANT**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: S/Shri Anil Kshetarpal & D.D. Bansal, Advocates
for the petitioners.

Shri G.S. Attariwala, Additional Advocate General, Punjab.

Shri Rajiv Sharma, Advocate for respondent(s) No.1.

Shri Ajneesh Raj Takkar, Advocate, for respondents No.2 & 3.

ORDER

Surya Kant, J. - (Oral):

This order shall dispose of CWP Nos.17503, 17865, 17881, 18064, 18073, 18377, 18382, 18475, 19085, 19123, 19247 of 2007 and CWP Nos.1291, 1534, 1675, 2048, 2113, 2256, 2665, 3254, 3256, 3834, 4250, 5778, 5987 and 6423 of 2008 as common questions of law and facts are involved in these cases.

For brevity, the facts are being taken from CWP No.17503 of

2007.

The petitioners are rice millers in the State of Punjab. They seek quashing of letter dated 27.8.2007 issued by the Union of India, Ministry of Consumer Affairs, Food and Public Distribution whereby the previous circular dated 20.12.2006 has been revised and full value cut has been imposed on the levy rice. The petitioners also seek quashing of the consequential notices dated 5/6 November, 2007 (Annexure P-2 & P-3) served upon them by the Food Corporation of India for effecting recovery thereof.

The controversy pertains to the relaxation in respect of damaged and discoloured specifications of rice in the Kharif Marketing Season (KMS) 2006-07. Shorn of the details, suffice it to notice that two types of paddy is procured by the petitioner-rice shellers for milling purposes, namely, custom rice and levy rice. While the paddy for custom rice milling is purchased by the State Govt. agencies and is allocated to different rice shellers for milling purposes, the paddy for levy rice is directly purchased by the rice shellers themselves from the market/farmers. The purchase or allocation of paddy is governed by various Statutory Orders issued from time to time by the Central or the State Govt. under the Essential Commodities Act, 1955.

For the KMS 2006-07, the Govt. of India fixed the following prices of levy rice vide its order dated 3.10.2006 (Annexure P-5):-

(Rs. Per quintal)

Variety	Raw Rice	Par-boiled
Common	1092.10	1092.00
Grade A	1141.70	1140.80

It appears that the representatives of the petitioner-millers

wanted relaxation in the above reproduced specifications in respect of the damaged or discoloured grain as according to them, the paddy supplied by the State Govt. agencies for custom rice milling or the one purchased by them from the open market for levy rice was moisturized due to excessive rains and was below the Fair Average Quality (FAQ). On consideration of their representation, the Chief Secretary to Govt. of Punjab vide his D.O. Letter dated 18.12.2006 (Annexure P-8) made the following recommendations:-

> "*The representatives of the Millers met the Food Supplies Minister, Punjab again on 18.12.2006 and reiterated their request for relaxation in the specifications of damaged and discoloured grain. A copy of the representation submitted by them is attached. The Millers have pleaded that, in the past whenever relaxation in damaged and discoloured refraction was allowed, no value cut was imposed as the quantity of rice remains the same. Value cut is imposed only when the out turn ratio is reduced as the quantity of rice is resultantly reduced. <u>There is merit in the plea taken by the Millers. Therefore, it is recommended that the demand for relaxation in the damaged and discoloured specifications of rice may be considered without imposing value cut.</u> An expeditious decision in this regard will enable us to start contributing rice to the Central Pool immediately.*" (emphasis applied)

The recommendations found favour with the Union of India who, vide their letter dated 20.12.2006 (Annexure P-6) relaxed the

specifications of rice during KMS 2006-07 in relation to Punjab State in the following terms:-

> "*I am directed to refer your DO No.PS-CS/06/2174 dated 18.12.2006 on the subject cited above and to state that as per the approved principle any relaxation even without any relaxation/reduction in OTR has to be with value cut, which is being followed uniformly in respect of all the States. Last year also, in respect of Punjab, the financial burden shared on 50-50 basis between the Government of India and the State Government had accounted for relaxation granted in paddy/rice. Accordingly, the proposal received from Govt. of Punjab has been examined and following relaxations in specifications of rice for CMR as well as levy have been allowed for the current KMS 2006-07.*
>
> - *Rice having additional 1% damaged/slightly damaged grains in respect of raw rice and additional 0.5% in respect of par boiled rice may be accepted over and above the maximum limit under uniform specification.*
> - *Rice having additional 2% discoloured grains in respect of raw rice and 1% in respect of par boiled rice may be accepted.*
>
> *The value cut in respect of rice delivered under relaxed specifications has been worked out by imposing a token value cut, as a special case, in public interest and should not be cited as precedent in the future. The Department*

would have no objection if a portion of the loss incurred by the State Government is passed on to the millers.

Value cut for rice under relaxed specifications

(a) CMR -

(i) Raw rice (Grade 'A') Rs.5.74 per quintal and (Common) Rs.5.48 per quintal

(ii) Parboiled rice (Grade 'A') Rs.5.68 quintal and (Common) Rs.5.43 per quintal.

(b) Levy rice -

(i) Raw rice (Grade 'A') Rs.5.71 per quintal and (Common) Rs.5.46 per quintal

(ii) Parboiled rice (Grade 'A') Rs.5.70 per quintal and (Common) Rs.5.46 per quintal.

Rice conforming to uniform specifications would continue to be accepted by the FCI as per the costing sheet already communicated and it is expected that most deliveries would take place without the aforesaid relaxations." (emphasis applied)

There is no denial to the fact that the petitioner-rice shellers supplied the milled rice as per the relaxed specifications and payments have also been made to them in terms thereof.

After a period of about 9 months, the Govt. of India has issued the impugned decision dated 27.8.2007 (Annexure P-6), whereby the previous decision dated 20.12.2006, reproduced earlier, has been revised/modified to the extent that the relaxation in value cut, so far as it pertained to the levy rice, has been withdrawn and the value cut, originally

determined vide circular dated 3.10.2006 has been imposed. Pursuant thereto, the Food Corporation of India and other procurement agencies of the State of Punjab have issued recovery notices to the petitioners, prompting them to approach this Court.

Notice of motion was issued and in response thereto, the Union of India and the procurement agencies have filed their respective counter affidavits. On the asking of the Court, an additional affidavit dated 5.12.2008 has also been filed by the Union of India through its Under Secretary, Ministry of Consumer Affairs, Food and Public Distribution.

One of the contentions raised on behalf of the petitioners is that the relaxation in value cut in respect of the custom and levy rice granted by the Govt. of India vide its decision dated 20.12.2006 during KMS 2006-07 had already been acted upon, namely, the milled rice having been supplied or payments received as er that, the subsequent decision dated 27.8.2007, which is essentially administrative in nature, could not be enforced retrospectively thereby asking the petitioners to refund the concessional amount.

On the other hand, it is urged on behalf of the Union of India that the subsequent decision dated 27.8.2007 is in continuity of the decision making process and is of correctional nature whereby an inadvertent mistake committed while issuing the previous circular dated 20.12.2006, has been rectified. To be precise, their plea is that the correction carried out vide subsequent policy circular dated 27.8.2007 would relate back to the date when the error had occurred, i.e., on 20.12.2006.

The arguments were heard at length on January 28, 2009 and in order to appreciate the rival contentions, Ministry of Consumer Affairs

and Public Distribution, Govt. of India was directed to produce the original records. In deference thereto, Shri Shashi Bhushan Sinha, Director, Ministry of Consumer Affairs has produced the original records and the same have been perused. The record reveals that the reference from the Govt. of Punjab (Annexure P-8) was received and considered at different levels. The authorities took notice of the fact that the paddy sample corrected by the FCI (Vigilance) as well as those by S&R Division indicated procurement of the paddy with below specifications, therefore, the rice stocks may not conform to the uniform specifications. The authorities also took notice of the fact that the rice millers in Punjab were making hue and cry and had stopped supply of the custom-milled rice. As there was an urgent demand of the rice to the deficient States, a workable solution was evolved to tide over the situation and in terms thereof the financial liability, if any, arising out of the proposed relaxation was decided to be shared in the ratio of 50:50 between the Central Govt. and State of Punjab. The decision regarding relaxation in the value cut was accordingly approved at the highest level and thereafter only the circular dated 20.12.2006 was issued.

The original record further reveals that on May 5, 2007, the Secretary (F&PD) took notice of the fact that the State agencies in Punjab seemed to have procured paddy with higher moisture and higher percentage of damaged paddy and continued to maintain that the paddy is FAQ but the millers had a different view on the whole situation which prompted them to go on strike and there was a complete disruption of supply of the rice for over a month. He further observed that, “in the case of levy rice, however, since the millers bought paddy at their level, they were fully responsible for the purchase and value cut should be in full”. These observations led to the

re-thinking process on the decision dated 20.12.2006 to the extent that the relaxation in value cut should be confined to the paddy supplied by the State agencies to the millers for custom rice and not for the paddy purchased by the millers at their own from the market for the levy rice milling. The record does indicate that the Principal Secretary (Food), Govt. of Punjab was also asked to respond and he opposed the modification/revision in the previous decision dated 20.12.2006 and wanted the Union of India to stick to its previous decision dated 20.12.2006.

Vide its letter dated 13.7.2007, the Govt. of Punjab appears to have put-forth the following reasons in support of its viewpoint:-

> "(i) Imposition of value cut is unwarranted.
>
> (ii)FCI has not suffered financial loss as the rice has been issued to PDS without any value cut.
>
> (iii) The paddy, which conforms to FAQ specifications, can be purchased by the Rice Millers by paying little higher price than MSP.
>
> (iv) The paddy which does not conform to FAQ specifications is procured by rice millers at lower than MSP prices.
>
> (v) During KMS 2006-07, about 125.78 lakh MTs was received in the mandis, 105.63 lakh MTs was procured by Government agencies on MSP.
>
> (vi) Rice millers had purchased 20.15 lakh MTs, out of which 17.04 lakh MTs paddy was procured at prices higher than MSP and 3.11 lakh MTs was procured at price lower than MSP.

(vii) The entire rice in KMS 2006-07 has been delivered under relaxed specifications."

As may be seen, the Govt. of Punjab took a specific stand that during KMS 2006-07, about 125.78 lac MT paddy was received in the *mandis*, out of which 105.63 lac MT was procured by the Govt. agencies on Minimum Support Price (MSP), whereas rice millers purchased 20.15 lakh MT and even out of that, 17.04 lakh MT paddy was procured at the prices higher than MSP and it was only 3.11 lakh MT which was procured by them at a price lower than MSP.

The reasons put-forth by the Punjab Govt., however, did not find favour with the Union of India which finally issued the impugned circular, dated 27.8.2007.

Having heard Learned Counsel for the parties at some length and on perusal of the original records, I am of the considered view that the decision taken by the Union of India, which culminated into the circular dated 27.8.2007, has its own rationale and is based upon more than one valid reasons. This Court, having regard to the well-known parameters on the scope of judicial review, would not venture into these reasons which have been uniformly applied throughout the country.

The next question arises as to whether the said policy decision could be implemented retrospectively in order to take away the concession which the petitioners had already enjoyed in terms of the previous policy decision dated 20.12.2006. The decision dated 27.8.2007 is purely of administrative nature and can have no retrospective effect. True it is that both the decisions dated 20.12.2006 and 27.8.2007 were taken by the Union of India during the currency of the KMS 2006-07, however, the subsequent

decision dated 27.8.2007, withdrawing certain concessions could be applied only in respect of the supply of the levy rice by the millers on or after the said date.

For the reasons afore-stated, these writ petitions are allowed to the extent that the policy decision 27.8.2007 is upheld, however, the same being prospective in applicability, the consequential recovery notices issued by the FCI or other procurement agencies giving effect to the said policy decision even in respect of the levy rice supplied by the petitioners prior to the said policy decision, are hereby quashed.

No order as to costs.

February 6, 2009. [**Surya Kant**]
kadyan **Judge**